

EXHIBIT O

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX, JR., M.D., as)
an individual and in his)
representative capacity under)
Business and Professions Code)
Section 17200, et seq.,)

Plaintiff,)

vs.)

Case No: 07-2486

RUSSELL D. STANTEN., M.D., LEIGH)
I.G. IVERSON, M.D., STEVEN A.)
STANTEN, M.D., WILLIAM M.)
ISENBERG, M.D., Ph.D., ALTA BATES)
SUMMIT MEDICAL CENTER, DOES 1)
through 100, inclusive,)

Defendants.)

COPY

****TRANSCRIPT MARKED CONFIDENTIAL****

DEPOSITION OF HON S. LEE, M.D.

VOLUME I, Pages 1 to 109

Monday, December 3, 2007

3:07 p.m.

taken at Kaiser Hospital
235 West MacArthur Boulevard, Room 669
Oakland, California

PREFERRED REPORTERS
Certified Shorthand Reporters
201 E. Watmaugh Road
Sonoma, California 95476
707-938-9227

Reported By: Linda Vaccarezza, RPR, CSR #10201

1 A We scrubbed -- we scrubbed together for quite
2 a while. So I would say probably -- particular to the
3 conversation, probably 15 minutes apiece.

4 Q Did you review the full patient files of each
5 of those cases?

6 A They are full patient files in the sense of
7 their admission -- admission file. Yes.

8 Q You reviewed the admission report from the
9 admitting physician?

10 A Right.

11 Q You reviewed the operating report or reports?

12 A Right.

13 Q Did you review nursing notes?

14 A Yes.

15 Q Did you review the nursing notes from the
16 operation?

17 A The nursing notes from the operation? Yes.

18 Q Did you review any pictures, echocardiograms
19 or --

20 A No. Did not review the echoes.

21 Q How about TEEs? T-E-Es?

22 A No. Did not review the T-E-E-s. No.

23 Q You refer to that as a T-E-E?

24 A T-E-E. Yes. Transesophageal echoes.
25 T-E-Es.

1 practitioners of minimally invasive valve procedures
2 in the Bay Area?

3 A At the time of this? No.

4 Q Before you actually conducted a minimally
5 invasive valve procedure, did you have training?

6 A No.

7 Q Did you work with anyone else who had prior
8 training when you performed your first minimally
9 invasive valve procedures?

10 MR. EMBLIDGE: Vague. I need to make objections.

11 THE WITNESS: No, I did not work with anybody who
12 has had.

13 BY MS. MCCLAIN:

14 Q Did you understand one way or the other
15 whether the operating room team that worked with you
16 on your initial minimally invasive valve procedures
17 had had training or experience?

18 A When I started?

19 Q Yes.

20 A Ask the question again.

21 Q Did you understand that the people who were
22 with you in the operating room, the scrubs, the
23 perfusionists, the anesthesiologists, had had either
24 training or experience in minimally invasive
25 procedures?

1 A They -- I understood that they did not have
2 formal training, because there was really no formal
3 training at that time. But I understood they had
4 experience based on working with Dr. Ennix and
5 Dr. Kahn.

6 Q Do you know whether Dr. Kahn had training
7 before he commenced these procedures?

8 A Not -- I do not know. When you say --

9 Q Training, went to a different hospital to see
10 the training, had a proctor, any sort of training?

11 A Yeah. So -- yes, then, I need to qualify my
12 statement. Prior to me doing my first one, I went and
13 observed other physicians do minimally invasive
14 cardiac surgery. Do I consider training -- cardiac
15 surgery, valve surgery.

16 Q When we use the term, "minimally invasive,"
17 you and I both, at times, said minimally invasive
18 procedures and minimally invasive valve procedures, we
19 are talking about the same thing, right?

20 A Yes. Yes.

21 Q About how many other procedures had you
22 observed before you embarked on the first one?

23 A Two or three.

24 Q Where was that?

25 A One in Atlanta; one in Oregon. Those were

1 THE WITNESS: They were long, but I thought they
2 were not doing minimally invasive surgery. I thought
3 they would be in the purview of -- I thought it would
4 be in the window.

5 MR. EMBLIDGE: I am sorry; in the window?

6 THE WITNESS: In the window of standard.

7 BY MS. MCCLAIN:

8 Q So at the time when you reviewed it, yourself
9 not having done minimally invasive procedures and
10 presumably not having studied at any great length
11 anyone else doing minimally invasive procedure; is
12 that right?

13 A Yes.

14 Q You were guessing to some extent that they
15 were within the realm of reason; is that right?

16 A Yes.

17 (Telephone interruption.)

18 (Pause in proceedings.)

19 BY MS. MCCLAIN:

20 Q If you need to step out, of course, Dr. Lee,
21 please do so.

22 A No. That's okay.

23 Q When you eventually came to do minimally
24 invasive procedures, did you reconsider your view with
25 respect to the excessive length or non-excessive

1 length of these first four procedures?

2 A Yes.

3 Q What was your thinking after you had actually
4 done the procedures?

5 A That these times are probably appropriate for
6 first cases.

7 MR. EMBLIDGE: I'm sorry. "Probably
8 appropriate"?

9 THE WITNESS: Yes. They were -- yeah.

10 MR. EMBLIDGE: I'm just having trouble hearing
11 you. Sorry.

12 THE WITNESS: Sorry. I'll speak up.

13 BY MS. MCCLAIN:

14 Q So one of the cases took seven hours and 31
15 minutes of actual surgery, one of the aortic valve
16 replacements, with a pump time of 234 minutes; and a
17 cross-clamp time of 171 minutes.

18 And based upon your subsequent familiarity
19 with minimally invasive valve procedures, do you think
20 those times are high? Medium? Low?

21 A Those times are high. I think -- but given
22 the scenario of the case, that was a difficult case,
23 the anatomy was difficult. And sometimes we are faced
24 with difficult anatomy that takes us longer.

25 Q How do you know that?

1 A I think, yes. I think it's a valid concern.

2 Q Do you think the concerns that Brian Hite
3 were expressing were legitimate concerns?

4 A Yes.

5 Q Do you know that the officers of the medical
6 staff placed a hiatus on the minimally invasive valve
7 procedures after these first four were done?

8 A Yes. And I recall that.

9 Q Did you think that was a reasonable response
10 to the outcomes?

11 A I think that was a reasonable response.

12 Q Do you agree that the outcomes of these four
13 procedures were alarming? .

14 A Yes. There were -- there were reason to be
15 concerned.

16 Q If you turn to the third page of the document
17 in front of you, about midway through that page, the
18 document says, "The officers had a Kaiser surgeon
19 thoroughly review the cases for which specific
20 concerns were raised. The reviewer closed two cases;
21 two others were felt to have major documentation
22 issues, but not care issues."

23 Is that an accurate reflection of your
24 conclusion?

25 A Yes. I think that's -- I remember that's

1 what I concluded.

2 Q What were your documentation concerns?

3 A Documentation concern was the type of
4 procedure, the document -- the documentation of the
5 discussion with the patients as to the type of
6 procedure.

7 Q Your concerns mainly revolved around whether
8 or not informed consent was documented; is that right?

9 A Yes.

10 Q Would you expect there to be more extensive
11 documentation of informed consent when a new procedure
12 is being done?

13 A Yes.

14 Q Would you expect there to be documentation
15 that the patient was told this was an alternative
16 procedure that had not previously been attempted?

17 A Maybe not in those exact words, but something
18 to that effect.

19 Q What would you expect to be conveyed in the
20 informed consent process for these new procedures?

21 A That this is a new option, and that the
22 patient understands that.

23 Q Would you expect the surgeon to convey that
24 this was not a procedure that the surgeon had done
25 before?

1 condition this patient found himself in?

2 A It's a possibility; although that was not my
3 conclusion.

4 Q What was your conclusion?

5 A I didn't have one because there were so many
6 possibilities. Signs, suturing, technique.

7 Q And the National Medical Audit Group that
8 subsequently reviewed some of those surgeries found
9 the following with respect to that operation:

10 "Dr. Ennix made technical errors that led to
11 ventricular damage and a paravalvular leak, and the
12 need for a second surgery. The leak should have been
13 apparent in the OR, and the patient should not have
14 left the OR without it being detected and repaired."

15 Do you think that's a reasonable conclusion
16 to reach, or are you able to comment upon it at all?

17 A I'm not able to comment on it. Because I
18 have -- sometimes I'm faced with the same results.
19 And intraopothy we don't see it. Then something
20 happens post-operatively or either immediately or a
21 month or a couple of months, then we see it.

22 So that's not the conclusion that I came to,
23 although that is a possibility.

24 Q Another physician reviewing that first
25 procedure came to the following conclusion: "A 27

1 cases for him, under the auspices of quality peer
2 review. And my comments was under -- they were under
3 that umbrella.

4 Q Understood. But typically when there is a
5 peer review examination of a cardiothoracic surgery,
6 that examination takes place at the cardiothoracic
7 peer review committee, correct?

8 A Correct.

9 Q And there's a discussion around the table
10 about the case?

11 A Yes.

12 Q And as to the four minimally invasive cases,
13 am I correct that that discussion around the table did
14 not occur?

15 A That is correct.

16 Q Can you think of any instance in the past
17 where -- you're aware of, other than with Dr. Ennix,
18 where peer review of a cardiothoracic surgeon occurred
19 outside the context of the cardiothoracic peer review
20 committee?

21 A No.

22 Q Do you understand my question?

23 A I understand. The cases -- the normal flow
24 of the cases would have been through a
25 cardiothoracic -- it appears consisting of

1 aware of, was initiated by someone outside of the
2 cardiothoracic surgery division?

3 A Yes. You can have requests to review a case
4 in peer review by anybody.

5 Q Okay. But where -- okay. I apologize. My
6 question wasn't clear.

7 Are you aware of any case, other than
8 Dr. Ennix's case, where the initial review occurred
9 not at the cardiothoracic peer review committee, but
10 at a different level?

11 A Am I aware of any other case? I can't say
12 I'm aware of any other cases, but it doesn't surprise
13 me.

14 Q Are you familiar with the National Medical
15 Audit?

16 A National Medical --

17 Q The organization that did the outside peer
18 review of Dr. Ennix.

19 A I'm not familiar with them, no.

20 Q Have you ever heard of Mercer Consulting?

21 A No, I've not heard of them. But that's
22 purely my ignorance. And hopefully the fact that I
23 don't know them may be a good sign.

24 Q Exactly. Have you ever heard of Dr. Bruce
25 Reitz?

1 A Yes.

2 Q What do you know of him?

3 A I know him professionally, and he has started
4 programs of his own. He's very well respected. He's
5 almost an icon.

6 Q In the cardiac surgery?

7 A In the cardiac surgery arena.

8 Q Have you ever heard of Dr. Bruce Lyttle?

9 A Another surgeon of similar stature.

10 Q Have you ever heard of Dr. Leland Housman?

11 A Housman, no.

12 Q Am I correct that in your experience at
13 Kaiser in the peer review system, you're not aware of
14 any case where the cardiothoracic surgeons have found
15 no care issues but nonetheless, a cardiothoracic
16 surgeon was reviewed at a higher level?

17 A Say that again.

18 Q I think there were three negatives in there.

19 I thought I heard you say that at Kaiser --
20 you've had about seven years of experience in peer
21 review at Kaiser, correct?

22 A Yes.

23 Q Has there been an instance at Kaiser that
24 you're aware of where at the cardiothoracic peer
25 review level, there was a finding of no care issue,

1 A Yes.

2 Q What do you know of him?

3 A I know him professionally, and he has started
4 programs of his own. He's very well respected. He's
5 almost an icon.

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7 A In the cardiac surgery arena.

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13 Kaiser in the peer review system, you're not aware of
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15 no care issues but nonetheless, a cardiothoracic
16 surgeon was reviewed at a higher level?

17 A Say that again.

18 Q I think there were three negatives in there.

19 I thought I heard you say that at Kaiser --
20 you've had about seven years of experience in peer
21 review at Kaiser, correct?

22 A Yes.

23 Q Has there been an instance at Kaiser that
24 you're aware of where at the cardiothoracic peer
25 review level, there was a finding of no care issue,

1 but nonetheless, that surgeon had his or her cases
2 reviewed at a higher level?

3 A I've not been aware of any cases.

4 Q And have you been aware of a case like that
5 at Summit, other than Dr. Ennix's case?

6 MS. MCCLAIN: Objection. Lack of foundation.

7 THE WITNESS: No, I'm not aware of any.

8 BY MR. EMBLIDGE:

9 Q During what time period did you or have you
10 served on the cervicothoracic peer review committee at
11 Summit?

12 A November 2000 to present.

13 Q Can you estimate the number of cases that you
14 have peer reviewed at Summit?

15 MS. MCCLAIN: Objection. Vague as to "you."

16 BY MR. EMBLIDGE:

17 Q I don't mean the committee, I mean you
18 personally.

19 A Me, personally, maybe ten a year at most.
20 Five to ten a year.

21 Q So between 35 and 70?

22 A Reasonable.

23 Q Have you ever served on an ad hoc committee?

24 A No. If this is considered an ad hoc
25 committee, then I'm not sure if I'm serving or if I

1 surgery QI committee, and eventually the ad hoc
2 committee.

3 Q But as far as your direct communication,
4 apart from documentation that you may have done, did
5 you have any direct communication about Dr. Ennix's
6 four minimally invasive cases with anyone other than
7 Dr. Steven Stanten and the members of the ad hoc
8 committee?

9 A I think I may have out of courtesy to the
10 chief of cardiothoracic surgery. I told him that I
11 was reviewing this and these are my findings.

12 Q And this is Russel Stanten?

13 A Yes.

14 Q Now, Dr. Steven Stanten is on record as
15 saying that your review of Dr. Ennix's cases was a
16 very thorough job, even interviewing all those
17 involved in the cases included anesthesiologists and
18 the operating team members.

19 I thought I heard you testify at the
20 beginning of your deposition that you didn't interview
21 anesthesiologists. Is Dr. -- what's right?

22 A I misspoke. At that time, my -- my memory
23 failed me. But after speaking -- and now I remember
24 when the question was, did anesthesiologists share the
25 concerns, that prodded -- and I remembered, yes, I

1 talked to Brian Hite about his concerns. And I think
2 -- yeah.

3 So I talked to anesthesiologists and I
4 probably talked to circulating nurses, too, but I
5 specifically remember speaking with techs.

6 Q And did you talk to assisting surgeons?

7 A I would like to say yes, but I don't remember
8 specifically. I may have spoken to Nolli, but I don't
9 remember the -- what was gleaned from that, so I can't
10 remember.

11 Q And when you say Nolli, that's N-O-L-L-I,
12 Nolli Young?

13 A Yes. Nolli Silva.

14 Q Nolli Silva. Okay. Sorry about that.

15 You reported to the ad hoc committee in the
16 meeting that Ms. McClain showed you on September 27th,
17 Exhibit 3, right?

18 A Yes.

19 Q You actually attended that meeting, right?

20 A Yes, I attended that meeting.

21 MR. EMBLIDGE: I need to go off the record for a
22 second.

23 (Recess taken from 5:30 p.m. to 5:31 p.m.)

24 (Discussion was held off the record.)

25 BY MR. EMBLIDGE:

1 there was a care issue sufficient to have a doctor
2 review, correct?

3 A Yes.

4 Q And then the doctor reviewed the remaining
5 five cases and found no sufficient care issues that
6 warranted review by the full cardiothoracic peer
7 review committee, right?

8 A That's correct. I think that -- yes.

9 Q When you're doing the physician review for
10 the cardiothoracic peer review committee, is your
11 review at that level as extensive as the review you
12 did of Dr. Ennix's four cases?

13 MS. MCCLAIN: Objection. Compound.

14 THE WITNESS: I would say the level of review for
15 Dr. Ennix's cases were more detailed because of the
16 attention brought to it. And the scope of the cases.

17 BY MR. EMBLIDGE:

18 Q What do you mean the attention brought to it?

19 A I was asked to review the cases by
20 Dr. Stanten. Steve Stanten.

21 MR. EMBLIDGE: Let me mark as Exhibit 10 a Quality
22 Management Worksheet dated 8/16/2004.

23 (Exhibit 10 was marked for identification.)

24 BY MR. EMBLIDGE:

25 Q If you look on the second page of this

1 think he made poor patient selection?

2 A No.

3 Q What's an example of poor patient selection?

4 Or would it be -- would an example of poor patient
5 selection be using a new innovative technique on the
6 healthy individual instead of the high-risk
7 individual?

8 A Yes. If you have -- if you have that bias.
9 Patient selection is purely a personal bias. Someone
10 who I think may be too high risk for me may be a
11 standard for someone who operates at a Cleveland
12 clinic, let's say, who has a heart/lung machine -- who
13 has a VAD available, who takes care of those patients
14 all the time. Ventricular assist device.

15 Q So it's sort of in the eye of the beholder
16 thing?

17 A Yes.

18 MR. EMBLIDGE: I want to take a very quick break,
19 and then I may have a couple more questions but
20 shouldn't have many.

21 (Recess taken from 6:06 p.m. to 6:14 p.m.)

22 BY MR. EMBLIDGE:

23 Q Dr. Dat Ly, L-Y. Is that "Lee" or "lie"?

24 A "Lee."

25 Q Okay. In your experience in cardiothoracic

1 peer review at Summit and Kaiser, have the other --
2 aside from Dr. Ennix, have the other cardiothoracic
3 lead surgeons had patients who have died during or
4 shortly after surgery?

5 A Wait, wait, wait, wait. Your question
6 again?

7 Q Have the other cardiothoracic surgeons that
8 we identified --

9 A Yes.

10 Q -- practicing at Summit --

11 A Yes.

12 Q -- have they had patients who have died
13 during or shortly after surgery?

14 A Yes.

15 Q Have they had to convert to cardiopulmonary
16 bypass while performing coronary artery bypass
17 procedures?

18 A Yes.

19 Q Have they had patients return to surgery
20 for -- and I'm going to pronounce this wrong,
21 mediastinal bleeding?

22 A Yes.

23 Q Have they had patients experience cerebral
24 vascular accidents during or shortly after open-heart
25 cases?

1 A Yes.

2 Q Have they had patients experience deep
3 sternal wound infections?

4 A Yes.

5 Q Have they had patients experience vein donor
6 site infections shortly -- during or shortly after
7 CAGB cases?

8 A Yes.

9 Q And have they had patients return to surgery
10 for valve-related problems?

11 A Yes.

12 MR. EMBLIDGE: That's all I've got for you,
13 Doctor.

14 MS. MCCLAIN: I have just a couple of questions
15 Dr. Lee.

16 THE WITNESS: Sure.

17 REEXAMINATION BY MS. MCCLAIN

18 BY MS. MCCLAIN:

19 Q You said that you had been tangentially
20 involved with an ad hoc committee at Kaiser.

21 A The question was: Was I was aware? And
22 tangentially, I was aware.

23 Q So it didn't involve personal involvement on
24 your part?

25 A Correct.

1 STATE OF CALIFORNIA)

2 COUNTY OF SONOMA)

3 I, LINDA VACCAREZZA, a Certified Shorthand
4 Reporter of the State of California, duly authorized
5 to administer oaths pursuant to Section 2025 of the
6 California Code of Civil Procedure, do hereby certify
7 that

8 HON LEE,

9 The witness in the foregoing examination, was by
10 me duly sworn to testify the truth, the whole truth
11 and nothing but the truth in the within-entitled
12 cause; that said testimony of said witness was
13 reported by a disinterested person, and was thereafter
14 transcribed under my direction into typewriting and is
15 a true and correct transcription of said proceedings.

16 I further certify that I am not of counsel or
17 attorney for either or any of the parties in the
18 foregoing examination and caption named, nor in any
19 way interested in the outcome of the cause named in
20 said caption.

21 Dated the 17th day of December, 2007

22 _____
23 LINDA VACCAREZZA, RPR, CSR #10201
24
25

EXHIBIT P

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COYNESS L. ENNIX, JR., M.D.,)

Plaintiff,)

vs.)

ALTA BATES SUMMIT MEDICAL)
CENTER,)

Defendant.)
_____)

CERTIFIED COPY

Case No.:

C 07-2486 WHA

(JCS)

*** CONFIDENTIAL ***

DEPOSITION OF STEVEN STANTEN, M.D.

DATE: Wednesday, December 5, 2007

TIME: 9:43 o'clock a.m.

LOCATION: MOSCONE, EMBLIDGE & QUADRA, LLP
220 Montgomery Street, Suite 2100
San Francisco, California

REPORTED BY: THERESA WARD, C.S.R. 9587

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1 A I don't -- I don't know.

2 Q Can you give me any range?

3 A Within the year prior. It would be a guess, but
4 within the year.

5 Q And how did those facts come to your attention,
6 that Dr. Iverson had attempted this procedure before
7 Dr. Ennix?

8 A I don't recall specifically.

9 Q Do you recall generally how it came to your
10 attention?

11 A I think I heard about it at a meeting, but I
12 don't recall which meeting or where it came up.

13 Q Did you ask Dr. Hon Lee to review the four
14 minimally invasive cases?

15 A I did.

16 Q How did that come to be? How did you come to do
17 that?

18 A I don't understand the question. Why did I do
19 it?

20 Q Yeah.

21 A I went to the officers and the president of the
22 medical staff with the concerns raised by the
23 anesthesiologists about these cases, and we felt we needed
24 a better understanding of what was involved with these
25 procedures and a review of those cases to see if there were

38

1 issues that are beyond my expertise as a general surgeon.

2 Q So okay. The issues about these cases came to
3 your attention first through an anesthesiologist, right?

4 A That's right.

5 Q Who was that?

6 A Dr. Maire Daugherty.

7 Q Before going -- I'm sorry. To whom did you go to
8 get approval to use Dr. Lee?

9 A Once Dr. Daugherty notified me, I went to the
10 president of the medical staff, Dr. Isenberg, and the
11 officers met. I then reviewed those cases myself, the
12 charts of those cases, and it became apparent that it was
13 beyond my expertise to thoroughly look at those, and so we
14 felt we needed some help.

15 Q Before you went to Dr. Isenberg with your concern
16 about these four cases, had anybody expressed concern to
17 you, other than Dr. Daugherty?

18 A I think I asked other people in the operating
19 room. I don't remember who -- what their experience was
20 with how these cases were going, what was happening,
21 because this was the first I had heard about it, and so I
22 wanted sort of some confirmatory information that had other
23 people experienced difficulties and seen problems.

24 Q When you say this is the first you had heard
25 about it, what do you mean? What is the "it"?

1 Q In going to him, did you have any concerns that
2 he would do an objective review of the four cases?

3 A No.

4 Q Can you recall anytime that an expedited review
5 of a surgeon's cases -- can you recall anytime that an
6 expedited peer review of the surgeon's cases has taken
7 place outside of the peer review committee process, other
8 than this instance with Dr. Ennix?

9 MS. McCLAIN: Objection. Vague as to the phrase
10 "outside of the peer review committee process."

11 THE WITNESS: I'm not aware of any.

12 BY MR. EMBLIDGE:

13 Q Okay. Let me --

14 MR. EMBLIDGE: Actually, should we take a break?
15 And we'll start going through some documents.

16 (A break was taken.)

17 BY MR. EMBLIDGE:

18 Q Dr. Stanten, going back to this point in time
19 where you went to Dr. Isenberg about the four minimally
20 invasive cases, before going to Dr. Isenberg, did you talk
21 to Dr. Ennix about those cases?

22 A Not that I recall.

23 Q Why not?

24 A I felt that I needed to do some investigation
25 before going to him. I didn't understand at all the

1 magnitude of the issue or anything about the issue, and I
2 felt this needed some investigation first.

3 Q Sure. As part of an investigation, wouldn't you
4 want to talk to the lead surgeon on the four cases?

5 A Well, the concerns were raised by the
6 anesthesiologist about the conduct of the operation and the
7 choice of patients for that operation, and I felt that it
8 wasn't the appropriate time to go to Dr. Ennix.

9 Q What did you feel was the appropriate time?

10 A Once I understood the situation, once I
11 understood what was involved in these procedures, what the
12 nature of the complications were, what the nature of the
13 concerns of the -- whether the concerns of the
14 anesthesiologist were valid or not. I didn't know anything
15 about this. So I needed to learn about it.

16 Q Did you inform Dr. Ennix of Dr. -- that Dr. Lee
17 had been asked to review the four cases?

18 A I don't recall.

19 Q In the -- am I correct that, as far as cardiac
20 surgeons, you can't recall another instance where a cardiac
21 surgeon's performance was first reviewed by a physician
22 outside of the Cardiothoracic Peer Review Committee; is
23 that correct?

24 A That's correct.

25 Q As far as any other type of surgeon who normally

1 Medicine Department Peer Review Committee.

2 Q Is there anything else that you can recall that
3 you did in response to repeated complaints of a serious
4 nature about a physician, other than have those complaints
5 reviewed at the peer review committee level?

6 A Some issues that we hear are behavioral issues,
7 physician behavior, interaction with either colleagues or
8 staff. Those, we take at the medical staff to be very
9 serious, but those are not issues that go to the nurse at
10 the Peer Review Committee for review in that regard.

11 Q Where do they go?

12 A They might go directly to the officers.

13 Q But as far as patient care issues, other than
14 Dr. Ennix, the physicians who were brought to your
15 attention regarding serious issues of patient care, did you
16 do anything about those physicians, other than make sure
17 that their issues were reviewed by the relevant
18 departmental Peer Review Committee?

19 MS. McCLAIN: Objection. Compound. Vague.
20 Lacks foundation.

21 THE WITNESS: I forgot the first part of it, to
22 answer yes or no. So I need that one again.

23 BY MR. EMBLIDGE:

24 Q Sure. Okay. So right now, I'm talking about the
25 physicians who you received complaints about.

1 A Uh-huh.

2 Q You considered those complaints to be serious and
3 involving patient care.

4 A Uh-huh.

5 Q Regarding those physicians, did you do anything
6 about those complaints, other than make sure the complaints
7 were brought to the attention of the relevant departmental
8 Peer Review Committee?

9 A No.

10 Q Okay. Let me show you -- I'm going to show you a
11 document. I'm going to try and figure out what number it
12 is. We will call it 1010 because I know that's safe.

13 (Plaintiff's Exhibit 1010 marked
14 for identification.)

15 BY MR. EMBLIDGE:

16 Q Okay. Plaintiff's 1010 is a document Bates
17 stamped D 1739 through D 1714, and it involves a special
18 meeting that occurred on February 9, 2004. Do you see
19 that?

20 A Yes.

21 Q Is this a special meeting of the officers, or
22 special meeting of some other body?

23 A It's not the officers. So it's a special meeting
24 of other members.

25 Q So is it a special meeting of -- what? -- of a

1 these charts, that there were some -- two of the four
2 cases, he had some concerns about the care, but felt they
3 fell within the range of a learning curve with new
4 procedures.

5 Q So when it says here, "Dr. Lee noted several
6 documentation issues, but no quality-of-care concerns" --

7 A Right.

8 Q -- that's not accurate?

9 A I think that -- no. I think that's accurate.
10 That is Dr. Lee's assessment of the situation.

11 Q And did you have concerns about the credibility
12 of Dr. Lee's assessment?

13 A No.

14 Q The -- this document then goes on. I'm sorry.
15 Let's finish with Dr. Lee. So he came back and he reported
16 this to you verbally, right?

17 A Yes.

18 Q Did you and Dr. Lee have any subsequent
19 discussions about Dr. Ennix?

20 A Not that I recall.

21 Q Ever?

22 A Not that I recall.

23 Q So going back to this document. The third
24 paragraph says, "The Surgery Peer Review Committee met and
25 although their review was not as in depth as Dr. Lee's,

75

1 two of which were cited by the initial reviewer, do you
2 recall what the complication was that wasn't cited by the
3 initial reviewer?

4 A No, I don't.

5 Q And this is the only time that you can recall
6 that the Surgery Peer Review Committee has declined to
7 accept the findings of a peer reviewer that there were no
8 quality-of-care issues, correct?

9 A I don't think we really declined to accept his
10 report. I think we took it into account and came up with
11 our own decision.

12 Q You were just quoting me a portion of the report.
13 Where were you quoting from?

14 A Yeah. I was at the bottom of page 3, not to
15 accept the physician reviewer's findings that issues with
16 the cases were of documentation, not care. So we didn't
17 accept that particular phrase. We didn't ignore it. We
18 formed our own -- took it into account, and formed our own
19 opinion.

20 Q And this is the only time you are aware of,
21 correct, that the Surgery Peer Review Committee has not
22 accepted a physician reviewer's findings that there were no
23 care issues?

24 A That is the only one I'm aware of.

25 Q Going back to this document, 1015, the third

1 about his portion?

2 MR. EMBLIDGE: Yes.

3 MS. McCLAIN: So just review your portion.

4 THE WITNESS: Okay.

5 Okay.

6 BY MR. EMBLIDGE:

7 Q On the first page, there is a paragraph that
8 starts, "Dr. Stanten then asked Dr. Hon Lee."

9 Do you see that?

10 A Yes.

11 Q And it says, it attributes to you a comment that
12 "Dr. Hon did a very thorough job."

13 Is that an accurate reflection of what you think
14 Dr. Lee did?

15 A Yes.

16 Q And it then says later in the paragraph that
17 "Dr. Stanten stated that combining these concerns, the
18 concerns stated above, he felt," meaning you felt "these
19 issues were not procedure related, but physician related."

20 Did you reach that conclusion yourself, that the
21 issues concerning Dr. Ennix and the minimally invasive
22 cases were not procedure related, but physician related?

23 A I think that also reflects taking into account
24 the Juncd report, which was more information I had, and
25 this was -- this was what came out of the Surgery Peer

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1 STATE OF CALIFORNIA)
2) ss.

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4 COUNTY OF SANTA CLARA)

5 I, THERESA WARD, a Certified Shorthand Reporter
6 in and for the State of California, hereby certify that the
7 witness in the foregoing deposition,

8 STEVEN STANTEN, M.D.,
9 was by me duly sworn to tell the truth, the whole truth,
10 and nothing but the truth in the within-entitled cause, and
11 that the foregoing is a full, true, and correct transcript
12 of the proceedings had at the taking of said deposition,
13 reported to the best of my ability, and transcribed under
14 my direction.

15

16

17

Date December 19, 2007

Theresa Ward

Theresa Ward, C.S.R. 9587

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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COYNESS L. ENNIX, JR., M.D., as
an individual and in his
representative capacity under
Business & Professions Code
Section 17200 et seq.,
Plaintiff,

CERTIFIED COPY

vs.

No. C 07-2486

RUSSELL D. STANTEN, M.D. LEIGH
I.G. IVERSON, M.D., STEVEN A.
STANTEN, M.D., WILLIAM M.
ISENBERG, M.D., Ph.D., ALTA
BATES SUMMIT MEDICAL CENTER and
DOES 1 through 100,
Defendants,

-----/
CONFIDENTIAL

DEPOSITION OF:

STEVEN STANTEN, M.D.

VOLUME II

Monday, January 21, 2008

CONFIDENTIAL

Reported by:
Gina V. Carbone
CSR NO. 8249

HANNAH KAUFMAN & ASSOCIATES
Certified Shorthand Reporters
472 Pacheco Street
San Francisco, CA 94116
(415) 664-4269

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1 meetings or training sessions that you are talking
2 about?

3 A. No, I'm not.

4 Q. Do you recall anything else that was done
5 systemically to improve the operating room staff?

6 A. No.

7 Q. And what about the -- the specific
8 improvements that are cited here by you, system
9 improvements with cardiology and cardiothoracic surgery;
10 what did you do to work on those system improvements?

11 A. I personally didn't do anything. The concern
12 that the NMA report talked about was the communication
13 issues between the cardiologists and the cardiothoracic
14 surgeons. So I don't think that there was anything that
15 I could personally do to get involved with improving
16 that. Hopefully as the identification of these issues,
17 that was something they each took on individually.

18 Q. What did the hospital do to improve that
19 communication?

20 A. I'm not aware of anything specifically that
21 the hospital did.

22 Q. Are you aware of anything anybody did?

23 A. What the cardiac surgeons and the
24 cardiologists are doing individually among themselves,
25 discussing these cases more closely, I'm not -- I don't

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1 know.

2 Q. Okay. I understand you are not aware of what
3 they're talking about person to person, but are you
4 aware of anything that the hospital or the surgeons did
5 for system improvements with cardiology and
6 cardiothoracic surgery?

7 A. I think what I'm doing is I'm naming these two
8 areas that need systems improvements. There are some
9 things that I felt I might be able to impact, and other
10 things I didn't feel that I could personally impact.

11 Q. Right. I --

12 A. So I don't know if I understand -- I mean, I'm
13 not sure I was necessarily tying cardiology to cardiac
14 surgery specifically here, but identifying systems
15 issues.

16 Q. Sure. And I'm putting what you personally did
17 to one side.

18 A. Okay.

19 Q. Are you aware of anything anyone did to
20 improve communication systemically between cardiology
21 and cardiothoracic surgery?

22 A. I'm not aware whether that happened or not.

23 No.

24 Q. The next line talks about weekends -- well,
25 what did you mean by the next line?

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1 Q. Lamont Paxton is a friend?

2 A. Yes.

3 Q. Neighbor?

4 A. Yes.

5 Q. Former or current neighbor?

6 A. Well, pretty close still.

7 Q. And your kids go to school together?

8 A. Yes.

9 Q. Again, he's somebody you golf with and
10 socialize with?

11 A. Yes.

12 Q. Outside of formal meetings, by that I mean
13 meetings of the ad hoc committee, or the medical staff,
14 or the Medical Executive Committee, have you had any
15 discussions with Dr. Paxton about Dr. Ennix?

16 A. No.

17 Q. Have you had any discussions with the other
18 members of the ad hoc committee, Dat Ly or Barry Horn,
19 about Dr. Ennix?

20 A. No.

21 Q. Do you have any relationship with either of
22 them?

23 A. Friends and colleagues.

24 Q. Again --

25 A. They don't golf, so I've never played golf

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1 Have you had any discussions with any surgical
2 assistants about Dr. Ennix outside of formal meetings?

3 MS. McCLAIN: Other than what has been
4 testified to?

5 MR. EMBLIDGE: Q. Other than Mr. Lovin's
6 possible comment during a surgery with you.

7 A. Well, Mr. Lovin is a surgical tech, so
8 surgical assistants might be physician assistants or
9 other surgeons. So whether they were in on discussions
10 when Mr. Lovin or other people commented about
11 Dr. Ennix's behavior, I can't comment on. But I have
12 not had anybody specifically -- we have not had that
13 specific discussion over the -- at the operating table
14 over a patient.

15 Q. Dr. Bruce Moorstein, he's a friend of yours?

16 A. Yes.

17 Q. Somebody you socialize with?

18 A. Yes.

19 Q. Somebody you golf with?

20 A. Good one. He's a good one.

21 Q. And have you had any discussions with
22 Dr. Moorstein about Dr. Ennix outside of formal
23 meetings?

24 A. No.

25 Q. None whatsoever?

STATE OF CALIFORNIA

I do hereby certify that the witness in the foregoing deposition was by me duly sworn to testify the truth, the whole truth, and nothing but the truth in the within-entitled cause; that said deposition was taken at the time and place therein stated; that the testimony of the said witness was reported by me, a Certified Shorthand Reporter and a disinterested person, and was under my supervision thereafter transcribed into typewriting; that thereafter, the witness was given an opportunity to read and correct the deposition transcript, and to subscribe the same; that if unsigned by the witness, the signature has been waived in accordance with stipulation between counsel for the respective parties.

And I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said caption.

IN WITNESS WHEREOF, I have hereunto set my hand the 1st
day of February, 2008.

Cheryl V. Roberts
Certified Shorthand Reporter

CSR No. 8249